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28 July 2006

Our Ref: 439252-v2\LA\K\DS7
Your Ref:

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Mr Scott Gregson
General Manager
Adjudication
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Mr Gregson,

Exclusive Dealing Notification – Polycom Hong Kong Ltd.

We act for Polycom Hong Kong Ltd.

We enclose an exclusive dealing notification by Polycom Hong Kong Ltd. pursuant to section 93(1) of the *Trade Practices Act 1974*. This notification is lodged in respect of conduct which may constitute exclusive dealing under sections 47(6) and 47(7) of the Act. This notification is given in the prescribed form and should not be taken as an admission that the conduct would contravene the statutory prohibition.

Pursuant to section 95(2) of the Act, we request that items 3(b) and 3(c) of the enclosed notification be excluded from the public register as the information contained in those items is commercially sensitive confidential information.

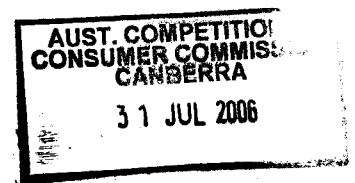
We also enclose a cheque made payable to the Commission in the sum of \$1000, being the prescribed lodgment fee.

Please do not hesitate to contact me should you require any further information or if you have any queries about the notification.

Yours sincerely,

Lindsay Kyle
Partner
(02) 8922 5282
lindsay.kyle@bakernet.com

Dagmar Strohmaier
Associate
(02) 8922 5614
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Encl

FORM G
COMMONWEALTH OF AUSTRALIA
Trade Practices Act 1974 - Sub-section 93(1)
EXCLUSIVE DEALING
NOTIFICATION

N92572

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(6) or (7) of that Act in which the person giving notice engaged or proposes to engage.

1. (a) **Name of person giving notice**
Polycom Hong Kong Ltd. ("Polycom")
- (b) **Short description of business carried on by that person**
Polycom supplies, among other things, standards-based Voice over IP telephones ("VoIP phones").
- (c) **Address in Australia for service of documents on that person**
Baker & McKenzie
AMP Centre
Level 27
50 Bridge Street
SYDNEY NSW 2000
Telephone: (02) 9225-0200
Facsimile: (02) 9225-1595
Attention: Lindsay Kyle
Direct: (02) 8922 5282
Email: lindsay.kyle@bakernet.com
2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice refers**
 - (i) Soft switch technology which is to be obtained from one of Polycom's nominated providers ("**VoIP Technology Product**"). (A current list of Polycom nominated providers who supply the VoIP Technology Product can be accessed at <http://www.polycom.com/techpartners.htm>); and
 - (ii) training services in relation to the VoIP Technology Product which are also to be obtained from one of Polycom's nominated providers ("**Training Services**").
- (b) **Description of the conduct or proposed conduct**
See Attachment A.
3. (a) **Class or classes or persons to which the conduct relates**
Polycom resellers who supply Polycom VoIP phones and provide related support services to users.

EXCLUDED FROM
PUBLIC REGISTER

(b) **Number of those persons**

(i) **At present time**

[Redacted box]

(ii) **Estimated within the next year**

[Redacted box]

(c) **Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses**

[Redacted box]

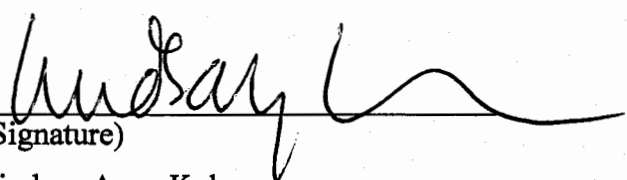
EXCLUDED FROM
PUBLIC REGISTER

4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice**

Lindsay Kyle, Partner, Baker & McKenzie, AMP Centre, Level 27, 50 Bridge Street, Sydney, New South Wales 2000.

Dated: 28 July 2006

Signed by/on behalf of the person giving this notice



(Signature)

Lindsay Anne Kyle
(Full Name)

Partner, Baker & McKenzie
(Description)

Attachment A

Description of the Proposed Conduct and Public Benefit

1. Background

- 1.1 Polycom is a supplier of VoIP phones. In order to operate a VoIP phone, users require certain soft switch technology. The VoIP phone needs to be compatible and fully operable with that technology in order to work properly.
- 1.2 Polycom VoIP phones are tested for interoperability with a variety of VoIP Technology Products. This enables users to have a number of integrated, reliable end-to-end VoIP solutions to choose from.
- 1.3 Polycom distributes its VoIP communication solutions primarily through its distributor and reseller network ("Resellers"). The Resellers are the direct point of contact for users. Resellers must therefore be sufficiently familiar with and trained in the VoIP Technology Product and the VoIP phone, in order to be able to install the VoIP Technology Product with the VoIP phone, and to respond to users' service needs in an efficient and cost-effective way.
- 1.4 Polycom does not have the resources or the technical knowledge to provide VoIP Technology Products or Training Services. Resellers source both, VoIP Technology Products and Training Services, from one of Polycom's nominated technology providers. Resellers have a free choice between Polycom's nominated technology providers (these providers are referred to as 'partners', though they are always third party entities).
- 1.5 Resellers install the VoIP Technology Product with the Polycom VoIP phones to then provide a fully integrated, customised VoIP solution to users.
- 1.6 Polycom requires Resellers to be 'certified' in the VoIP Technology Product. This requirement for 'certification' in practice means that the Reseller has been properly trained to install the highly complex VoIP Technology Products with VoIP phones and to provide high quality VoIP solutions and customer service to users. Polycom technology partners train and certify Resellers on their VoIP Technology Products. It is crucial that Resellers have direct access to a Polycom technology partner, or the partners' authorized distribution channel, on an ongoing basis in order to ensure timely, high quality and cost-effective customer service to users of the VoIP solution.
- 1.7 There are other VoIP phone manufacturers which are in competition with Polycom, as well as other resellers of VoIP phone products.

2. Relevant Conduct

Polycom requires Resellers to obtain the VoIP Technology Product and Training Services directly from one of Polycom's nominated VoIP technology partners. This is to ensure that Resellers are able to provide a high quality, fully integrated VoIP solution to users in an efficient and cost effective way.

3. Public Benefit

Polycom does not itself have the resources or technical knowledge to provide the VoIP Technology Product and Training Services to Resellers. It has therefore chosen to outsource the supply of VoIP Technology Products and related Training Services to technology providers who are specialists in those areas. Direct access to Polycom technology partners' high quality VoIP Technology Products and expertise enables Resellers to install the VoIP Technology Product with the VoIP phone and to provide high quality, timely and cost-effective customer service. In particular, the conduct gives rise to the following public benefits:

Acquisition of VoIP Technology Products from Polycom nominated technology providers

3.1 Interoperability and reliability

In order to be fully operable, Polycom's VoIP phone needs to be installed with certain soft switch technology. VoIP Technology Products have been tested and are proven to be interoperable with Polycom VoIP phones. The requirement that Resellers source VoIP Technology Products directly from one of Polycom's nominated technology partners enables Resellers to respond efficiently and cost-effectively to users' needs in terms of customised VoIP solutions and to consistently maintain high quality standards.

3.2 Expertise

VoIP Technology Products are complex and require thorough technical knowledge in terms of configurations, software, devices and network elements. Polycom does not possess the resources or technical knowledge to provide the VoIP Technology Product to Resellers itself or to install the technology with its VoIP phones prior to supply to Resellers. Depending on the users' needs, different expertise may be required which can only be provided to users in a reliable, efficient and cost-effective way if Resellers can access this expertise from the providers of the interoperable VoIP Technology Products, Polycom's technology partners.

Acquisition of Training Services from Polycom nominated technology providers

3.3 Ability to install the VoIP Technology Product

Polycom technology partners each develop complex VoIP Technology Products. They are best placed to provide the in-depth knowledge and technical support to Resellers to enable them to install the VoIP Technology Product with VoIP phones in order to provide high quality fully integrated VoIP solutions to users. Given that different users require different VoIP Technology Products, Resellers need to be able to access the provider of the relevant VoIP Technology Product.

3.4 Ability to provide customer support service

VoIP Technology Products are specialised and complex and their operation requires detailed technical knowledge. Polycom technology partners have the knowledge and expertise to provide the required training to Resellers. Training is provided to Resellers upon acquisition of the VoIP Technology Product and that training may vary depending on the type of VoIP Technology Product. The training enables Resellers to properly assist and support users. Users benefit by receiving rapid response times to support calls, fast solutions to problems and technology expertise.

Polycom does not itself possess the resources or the technical knowledge to provide such training to Resellers directly or to provide basic support services to users. Given Resellers install the VoIP Technology Product which is sourced directly from Polycom technology partners, it is most efficient and cost-effective if Resellers also obtain the relevant training from those Polycom technology partners directly.

4. Conclusion

- 4.1 The impact of Polycom's conduct is, in our submission, not such that the likely benefit to the public would be outweighed by the likely detriment to the public.
- 4.2 Overall, the conduct is beneficial as it enables Polycom Resellers to access VoIP Technology Products which are interoperable with Polycom VoIP phones, and the Training Services which are required in order to install and service the combined VoIP solution. Direct sourcing of these products and services from the Polycom technology partners ensures that Resellers are able to provide high quality VoIP solutions and to respond to users' servicing needs in the most efficient and cost-effective way.